



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/157002

PRELIMINARY RECITALS

Pursuant to a petition filed April 21, 2014, under Wis. Admin. Code §DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on June 26, 2014.

The issue for determination is whether petitioner's patient liability amount may be reduced by the amount of the additional cost of a private nursing home room.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sonya Ball, Case Manager
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County and is enrolled in the Family Care Program (FCP).
2. Petitioner resides in a nursing home and has a monthly FCP patient liability.

DISCUSSION

Petitioner requests that she be authorized to pay for the additional cost of a private nursing home room from the portion of her income that is her patient liability amount.

Under federal law a person's patient liability amount may be reduced by the amount of expenses for necessary medical or remedial care recognized under state law subject to reasonable limits on the amount of the expense. 42 C.F.R. §435.832(c)(4)(i). Under Wisconsin law, the term "necessary medical or remedial care" for nursing home residents has been narrowly defined to include only the cost of health insurance premiums. Wis. Admin. Code §DHS 103.075(6)(c)4.b.; see also, Wis. Stat. §49.45(7)(a).

In addition, covered nursing home services are medically necessary services provided by a certified nursing home to an inpatient and prescribed by a physician in a written plan of care. Wis. Admin. Code §DHS 107.09(2). The costs of all routine, day-to-day health care services and materials provided to recipients by a nursing home shall be reimbursed within the daily rate determined for MA. Id. The Wisconsin law places limitations on what is covered within that daily rate as follows:

Private rooms shall not be a covered service within the daily rate reimbursed to a nursing home, except where required under s. DHS 132.51 (2) (b) [communicable diseases that are reportable]. However, if a recipient or the recipient's legal representative chooses a private room with full knowledge and acceptance of the financial liability, the recipient may reimburse the nursing home for a private room if the following conditions are met:

1. At the time of admission the recipient or legal representative is informed of the personal financial liability encumbered if the recipient chooses a private room;
2. Pursuant to s. DHS 132.31 (1) (d), the recipient or legal representative documents the private room choice in writing;
3. The recipient or legal representative is personally liable for no more than the difference between the nursing home's private pay rate for a semi-private room and the private room rate; and
4. Pursuant to s. DHS 132.31 (1) (d), if at any time the differential rate determined under subd. 3 changes, the recipient or legal representative shall be notified by the nursing home administrator within 15 days and a new consent agreement shall be reached.

Wis. Admin. Code §DHS 107.09(4)(k).

Accordingly, the additional cost of a private room for a nursing home resident is not recognized under Wisconsin state law as necessary medical or remedial care. Therefore, petitioner's patient liability amount cannot be reduced for the purpose of paying for a private nursing home room. See also *DHA Final Decision* #MRA-13/72317 (March 6, 2006).

Written policy in the State of Wisconsin states that MA members in nursing homes are allowed to pay for some medically necessary non-covered services out of their patient liability and they are not required to use their personal needs allowance for these services. See *Medicaid Eligibility Handbook*, §27.7.8.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. This appears to be much less restrictive than the state law described above. However, to prove that a MA service is medically necessary, one must show that the service is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. [DHS 107.035](#), is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code §DHS 101.03(96m).

Here there is no evidence that petitioner's medically requires a private room. The evidence suggests that she would be more comfortable and prefer to stay in a private room, but that does not meet the medical necessity requirement. Therefore, even in light of state policy, petitioner's patient liability amount cannot be reduced for the purpose of paying for a private nursing home room.

Finally I add that Wisconsin law provides for nursing home resident's rights, which states that a nursing facility protect and promote the rights of each resident, including the "right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups, **except that this subdivision may not be construed to require provision of a private room.**" Wis. Stat. §49.498(3)(a)3 (emphasis added).

Based on the preponderance of the evidence before me, I find no authority by which I can authorize MA payment for a private room. MA recognizes that petitioner may prefer and choose such a room, but that additional expense remains with her. Any change that petitioner or petitioner's representative seeks with respect to these issues must be addressed through the legislature.

CONCLUSIONS OF LAW

Petitioner's patient liability amount may not be reduced by the amount of the additional cost of a private nursing home room.

THEREFORE, it is

ORDERED

The petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

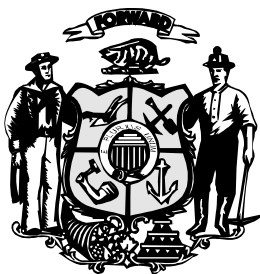
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of July, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 1, 2014.

Milwaukee Enrollment Services
Office of Family Care Expansion